

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs August 21, 2007

STATE OF TENNESSEE v. RUDOLPH MILLER BROOKS, JR.

Appeal from the Circuit Court for Blount County
No. C-13516 D. Kelly Thomas, Jr., Judge

No. E2006-02070-CCA-R3-CD - Filed November 13, 2007

The Appellant, Rudolph Miller Brooks, Jr., appeals the order of the Blount County Circuit Court revoking his probation. In June 2003, Brooks pled guilty to violation of the Motor Vehicle Habitual Offender Act and received a two-year sentence, suspended to supervised probation following service of thirty days in jail. In 2004, a violation warrant, as well as two follow-up reports, were filed alleging numerous violations of the conditions of probation. Following a revocation hearing, the trial court revoked Brooks' probation and ordered reinstatement of the original sentence. On appeal, Brooks argues that the trial court erred in revoking probation because there was insufficient evidence that Brooks' non-compliance with the terms of his probation was willful and that requiring him to serve the balance of his sentence was too severe. Following review, we find no abuse of discretion and affirm the judgment of the trial court.

Tenn. R. App. P. 3; Judgment of the Circuit Court Affirmed

DAVID G. HAYES, J., delivered the opinion of the court, in which THOMAS T. WOODALL and ROBERT W. WEDEMEYER, JJ., joined.

J. Liddell Kirk, Knoxville, Tennessee (on appeal); Mack Garner, District Public Defender, Maryville, Tennessee (at trial), for the Appellant, Rudolph Miller Brooks, Jr.

Robert E. Cooper, Jr., Attorney General and Reporter; Cameron L. Hyder, Assistant Attorney General; and Andrew Watts, Assistant District Attorney General, for the Appellee, State of Tennessee.

OPINION

Procedural History

In November 2001, the Appellant was indicted by a Blount County grand jury for violating the Motor Vehicle Habitual Offender Act. In June 2003, the Appellant pled guilty to the charge and was sentenced to two years, suspended to supervised probation following service of thirty days in jail. A probation order was subsequently entered by the trial court setting forth the conditions of the

Appellant's probation. In addition to the standard probationary conditions, which in this case included not violating the law, paying court costs, and reporting to an assigned probation officer, an additional enumerated condition was that the Appellant was to report to jail to serve his thirty-day term by September 29, 2003. In November, the trial court filed an order amending the judgment, which reflected that, due to health problems, the Appellant would begin serving his jail term on January 5, 2004. A second order was entered on December 23, 2003, which stated that the jail term was to be served on January 5 through January 20, with the remaining fifteen days being served from February 5 through February 20. The Appellant failed to report to serve the sentence.

On February 13, 2004, a probation violation warrant was filed alleging that the Appellant was in violation of his probation because he was delinquent in payment of court costs and had not reported to jail to serve the thirty days. On August 11, 2004, a follow-up violation report was filed charging that the Appellant had failed to report to his probation officer since February 4, 2004. The violation warrant was again amended on September 18, 2006, to reflect that the Appellant had been arrested for and pled guilty to a new theft charge.

A revocation hearing was held on September 25, 2006, at which the Appellant and his probation officer testified. Michael Lane, the Appellant's probation officer, testified that the Appellant had failed to report to serve his ordered jail term as required. He further testified that, after he filed the initial violation warrant, he informed the Appellant that he should turn himself in for the violation. However, Lane stated that after this conversation occurred, the Appellant ceased reporting for his scheduled visits as well. Moreover, Lane testified that he also learned that the Appellant had pled guilty to a new theft of property charge in November 2005.

The fifty-four-year-old Appellant testified and acknowledged that he had violated the terms of his probationary sentence, specifically that he failed to report to the jail to serve thirty days as ordered, that he stopped reporting to his probation officer altogether, that he was delinquent in his payment of scheduled court costs, and that he had been convicted of theft. However, he testified that he did not report to serve his jail term because of his extensive health problems and because he "got all kinds of mixed reports" about reporting to serve the thirty days. He testified that he was told that "the captain of the jail didn't want [him there] . . . in the shape [he] was in and the medication [he] was on." He specifically acknowledged, however, that both his probation officer and the trial court had instructed him to report to serve the time. Nonetheless, the Appellant asked the trial court to allow him to continue on probation because he needed to take care of his family.

After hearing the evidence presented, the trial court found that the Appellant had violated the terms of his probation. Finding "two big problems" to allowing the Appellant to remain on probation, those being that the Appellant had absented himself for over two years and had been convicted of a new crime, the court ordered that the Appellant's original sentence be served in confinement. The court found "no justification . . . health or otherwise," sufficient to allow the Appellant to remain on probation. The Appellant timely appealed the decision.

Analysis

On appeal, the Appellant asserts that the trial court erred in revoking his probation and, further, that ordering the Appellant to serve the full balance of his sentence was too severe a response to the nature of the violations established. Other than a brief recitation of the law, the Appellant's entire argument is as follows:

There was not sufficient evidence that [the Appellant's] non-compliance in regard to his failure to report to do the required jail time, and his failure to report as required to his probation officer, was willful. [The Appellant] has significant health problems and appeared to have some degree of confusion regarding how to coordinate his reporting responsibilities with his ongoing health issues. [The Appellant] was positive that he would be more diligent in following the requirements of probation, given another chance to do so. Revoking [the Appellant's] to serve the full balance of his sentence was too severe a response to the nature of the violations in evidence.

A trial court may revoke probation and order imposition of the original sentence upon a finding by a preponderance of the evidence that the person has violated a condition of probation. T.C.A. § 40-35-310, -311 (2006); *State v. Shaffer*, 45 S.W.3d 553, 554 (Tenn. 2001). This court reviews a revocation of probation under an abuse of discretion standard. *State v. Stubblefield*, 953 S.W.2d 223, 226 (Tenn. Crim. App. 1997) (citing *State v. Harkins*, 811 S.W.2d 79, 82 (Tenn. 1991); *State v. Delp*, 614 S.W.2d 395, 398 (Tenn. Crim. App. 1980)). This means that the evidence need only show that the trial judge has exercised conscientious and intelligent judgment in making the decision rather than acting arbitrarily. *State v. Leach*, 914 S.W.2d 104, 106 (Tenn. Crim. App. 1995) (citing *Stamps v. State*, 614 S.W.2d 71, 73 (Tenn. Crim. App. 1980)). Thus, in reviewing the trial court's action, it is our obligation to examine the record and determine whether the trial court has exercised conscientious judgment. If the trial court finds, by a preponderance of the evidence, that the defendant has violated a condition of probation, the court has the authority to revoke the probation and reinstate the judgment as originally entered. T.C.A. § 40-35-311(e). Discretion is abused only if the record contains no substantial evidence to support the trial court's conclusion that a violation has occurred. *Harkins*, 811 S.W.2d at 82.

After review, we conclude that the record amply supports the trial court's finding that the Appellant violated the terms of his probation in multiple ways, including his failure to serve his jail term, failure to report, and by being arrested and convicted of a new crime.¹ Upon finding that such violations occurred, the trial court was then authorized to revoke the Appellant's probation. *See* T.C.A. § 40-35-311(d). As noted, the Appellant does not contest that these violations occurred, he merely argues that the evidence does not establish that the violations of failing to report to jail and failing to report to his probation officer were not willful. Initially, we note that he does not make

¹ While other violations were established by the evidence, the trial court did not reference them in its findings. Thus, we do not rely upon those violations in our review.

such assertion with regard to the violation which resulted from his arrest and conviction of the new theft of property charge. That violation was established by the proof and, standing alone, is sufficient to support the revocation of his probation.

Moreover, his argument that he did not willfully violate probation by failing to serve his jail term or by failing to report to his probation officer because of his medical problems was not supported by the record. The Appellant presented no evidence of how his medical problems prevented him from complying with the conditions of probation. Indeed, he offered no medical evidence whatsoever at the revocation hearing other than his own self-serving testimony. Thus, he has failed to carry his burden of establishing that he did not willfully fail to comply. The Appellant acknowledged that both the trial court and his probation officer told him to report to serve his jail term, despite being aware of existing medical problems. Irrespective of these instructions, the Appellant chose to abscond from probation for a period of over two years, and, during that period, he had no contact with his probation officer or the court. Additionally, while our supreme court has held that revocation of probation based upon a defendant's failure to pay fines requires that the failure to pay was willful, *State v. Dye*, 715 S.W.2d 36, 41 (Tenn. 1986), this court has found that the trial court need not make findings regarding a defendant's willfulness in regard to the failure to adhere to the other terms of his probation. *State v. Derrick Crawley*, No. M2006-01895-CCA-R3-CD (Tenn. Crim. App. at Nashville, July 5, 2007); *State v. Julia Mosley*, No. E2004-01787-CCA-R3-CD (Tenn. Crim. App. at Knoxville, Apr. 8, 2005).

We must, likewise, reject the Appellant's assertion that ordering him to serve the balance of his sentence was too severe a response. Upon finding that a violation of probation has occurred, the trial court has two options: (1) cause execution of the original judgment as it was originally entered; or (2) modify a defendant's conditions of supervision, including extending the defendant's probationary period for up to two years. T.C.A. §§ 40-35-310, -311(e), -308(c) (2006); *see also State v. Hunter*, 1 S.W.3d 643, 646 (Tenn. 1999). Section 40-35-308(c), however, "addresses situations where a defendant violates his or her probation near the end of the term and, instead of ordering complete incarceration, a trial court *might desire* to extend the defendant's period of probation supervision." T.C.A. § 40-35-308, Sentencing Comm'n Comments (emphasis added). That is not the situation in this case. The Appellant was placed on probation in June 2003, and, by February 2004, a violation warrant had been filed. Soon thereafter, more violations occurred. We find no abuse in ordering reinstatement of the original sentence. Thus, upon finding that violations had indeed occurred, the trial court was statutorily authorized to order the Appellant to serve the balance of his original sentence in confinement. Having concluded that the trial court did not abuse its discretion, we affirm the judgment of the trial court revoking the Appellant's probation and reinstating his original sentence of confinement.

CONCLUSION

Based upon the foregoing, the judgment of the Blount County Circuit Court is affirmed.

DAVID G. HAYES, JUDGE